STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

IN RE CONTEMPT OF KELLY MICHELLE DORSEY

PEOPLE OF THE STATE OF MICHIGAN
Petitioner/Appellee
V

TYLER MICHAEL DORSEY,
Respondent,
and

KELLY MICHELLE DORSEY,
Respondent/Appellant.
_____/

SC: 150298
COA: 309269
Livingston CC Family Division:
08-012596-DL

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PETITIONER/APPELLEE'S SUPPLEMENTAL BRIEF ON APPEAL

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Plaintiff-Appellee accepts Defendant-Appellant's Statement of Basis of Jurisdiction.

Counter-Statement of Question Presented

Does the appellant's challenge to the trial court's order holding her in criminal contempt amount to an impermissible collateral attack on the trial court's January 14, 2011 order requiring her to submit to drug testing?

Defendant-Appellant Answers: "No."

Plaintiff-Appellee Answers: "Yes."

Court of Appeals Answers: "Yes."

Introduction

The world is an untidy place. It falls to our courts to bring order out of anarchy, which may be mistaken for liberty only at our peril. Courts speak through their written orders. Unless successfully challenged, those orders govern our actions and bring social concord out of chaos.

Where a party to a court action disagrees with an order, they must challenge that order, and not ignore it. The order must be followed until it is set aside, even if it infringes on constitutional rights. The parties cannot unilaterally decide what is constitutional, and follow their own beliefs. The Court's order must be followed until it is overturned.

As part of her son's juvenile adjudication, the family court entered an order requiring appellant Kelly Michelle Dorsey to submit to random drug screens at the request of the probation department. The order had been in place almost a year, and appellant had tested several times, before she refused to test on six different dates. The family court found appellant in criminal contempt. The Court of Appeals affirmed.

Appellant filed an application for leave with the Michigan Supreme Court, which ordered supplemental briefs addressing whether the appellant's challenge to the trial court's order holding her in criminal contempt amounts to an impermissible collateral attack on the trial court's January 14, 2011 order requiring her to submit to drug testing.

Counsel acknowledged that the juvenile court obtains jurisdiction to issue orders affecting an adult through MCL 712A.6.[1] Counsel also said, "I've advised my client to follow all court orders until the Court or an appellate court vacates them notwithstanding the arguments I'm going to make today which rely on a rather – one of the exceptions to the requirement to follow an invalid order which is where the Court lacks subject matter jurisdiction in the area."[2]

Counsel argued that random drug testing, which is unconstitutional under the Fourth Amendment, would exceed the subject matter jurisdiction of the family court.[3] The Court asked: "Do you think that there's a legitimate public interest in having juvenile delinquents in homes that are drug free?" Counsel answered: "Absolutely, Your Honor."[4] However, counsel argued, while the government does have a compelling interest in that regard, it does not outweigh the individual's Fourth Amendment rights where they do not have a lessened expectation of privacy, e.g., being on probation.[5]

The prosecutor pointed out that the court's order was entered in February of 2011, and it was first being addressed at the 04/27/2012 motion hearing after Ms.

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[1] 04/27/2012 Motion Hearing, p 6. MCL 712A.6 reads: "The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082, and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles."
[2] 04/27/2012 Motion Hearing, pp 3-4.
[3] 04/27/2012 Motion Hearing, p 7.
[4] 04/27/2012 Motion Hearing, p 9.
[5] 04/27/2012 Motion Hearing, pp 9-10.

Dorsey had been through a contempt proceeding.[6] The prosecutor said, "If there was something to object to they should have filed an appeal or objected."[7] Counsel conceded: "the prosecutor is correct that in most cases you have to appeal a court order rather than wait until contempt to challenge it."[8] However, counsel argued, "where the Court lacks subject matter jurisdiction that is pretty much the one exception to that rule that an invalid court order must be obeyed, because a court order without jurisdiction is void."[9] Counsel elaborated, "Now if the Court had subject matter jurisdiction or personal jurisdiction, then absolutely the order's valid and she can't now challenge it after a contempt conviction. But I've argued, Your Honor, that the Court lacks subject matter jurisdiction in this matter because it was acting as the juvenile court and Ms. Dorsey is an adult."[10]

The Court considered it a criminal contempt hearing and his findings would have been beyond a reasonable doubt.[11] Ms. Dorsey was found in contempt by the Court on February 2, 2012.[12] Jurisdiction of the parent is obtained by way of jurisdiction over the juvenile, the Court observed.[13] The Court denied counsel's motions and stayed the sentence to allow an appeal.[14]

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[6] 04/27/2012 Motion Hearing, p 13.
[7] 04/27/2012 Motion Hearing, p 14.
[8] 04/27/2012 Motion Hearing, p 16.
[9] 04/27/2012 Motion Hearing, p 16.
[10] 04/27/2012 Motion Hearing, pp 16-17.
[11] 04/27/2012 Motion Hearing, p 19.
[12] 04/27/2012 Motion Hearing, p 20.
[13] 04/27/2012 Motion Hearing, p 20.
[14] 04/27/2012 Motion Hearing, p 21-22.

The Court of Appeals disagreed with appellant's contention that the family court lacked subject-matter jurisdiction.[15] Generally, subject-matter jurisdiction is defined as a court's power to hear and determine a cause or matter.[16] Subject-matter jurisdiction cannot be waived and can be raised at any time by any party or the court.[17] A trial court must dismiss an action when there is a lack of subject-matter jurisdiction, and a party cannot be estopped from raising the issue.[18]

The family division of the circuit court obtained authority over juveniles; the family court also acquires jurisdiction over adults.[19] The court may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction.[20]

Appellant's contention that the family court lacked subject-matter jurisdiction is without merit; the subject matter involved the appellant's son's juvenile proceeding. Accordingly, the family court was entitled to render orders affecting adults that were necessary for the physical, mental, or moral well-being of appellant's son.[21]

Individuals who violate court orders are subject to contempt proceedings.[22] The longstanding policy is that "a contempt proceeding does not open to

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[15] *In re Contempt of Dorsey*, 306 Mich App 571, 580; 858 NW2d 84 (2014).
[16] 306 Mich App at 581.
[17] Id.
[18] Id.
[19] 306 Mich App at 582; MCL 712A.2; MCL 712A.6.
[20] Id; MCL 712A.6.
[21] 306 Mich App at 583.
[22] Id.

reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy."[23]

Appellant did not contest the authority of the family court in the juvenile proceeding to enter the order requiring her to submit to drug testing as opposed to the then concurrently pending abuse and neglect petition. Compliance with the drugs screens was a requirement to reunite appellant with her son. DHS reported that appellant was in compliance until nearly a year after the entry of the order; appellant objected to the case from which the order originated only after a show-cause order was entered. The order was in place for a year before appellant contested its origin.[24]

An order entered by a court, with subject-matter jurisdiction, must be obeyed until it is judicially vacated. The validity of an order is determined by the courts, not the parties. Because the family court concluded that appellant interfered with the court's function, appellant could be punished for contempt.[25]

[23] 306 Mich App at 589-590.
[24] 306 Mich App at 590-591.
[25] 306 Mich App at 583.

Supplemental Argument

Does the appellant's challenge to the trial court's order holding her in criminal contempt amount to an impermissible collateral attack on the trial court's January 14, 2011 order requiring her to submit to drug testing?

Yes. "This rule is so well settled, it is not open to question."[26]

In re Hatcher, 443 Mich 426; 505 NW2d 834 (1993) involved an invalid collateral attack on the probate court's subject matter jurisdiction. The *Hatcher* Court, at 438-439, wrote:

> It is beyond question that a party may attack subject matter jurisdiction at any time. *Shane v Hackney*, 341 Mich 91; 67 NW2d 256 (1954). In fact, a proven lack of subject matter jurisdiction renders a judgment void. *In re Hague*, 412 Mich 532; 315 NW2d 524 (1982). Here, however, the respondent confuses the distinction between whether the court has subject matter jurisdiction and whether the court properly exercised its discretion in applying that jurisdiction. As explained in *Jackson City Bank & Trust v Fredrick*, 271 Mich 538, 545-546; 260 NW 908 (1935),
>
> > "'Want of jurisdiction must be distinguished from error in the exercise of jurisdiction. Where jurisdiction has once attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked. Error in the determination of questions of law or fact upon which the court's jurisdiction in the particular case depends, the court having general jurisdiction of the cause and the person, is error in the exercise of jurisdiction. Jurisdiction to make a determination is not dependent upon the correctness of the determination made.' 33 CJ, pp 1078, 1079."

Generally, lack of subject matter jurisdiction can be collaterally attacked and the exercise of that jurisdiction can be challenged only on direct appeal. *In re*

[26] *Baker v Brown*, 372 Ill 336, 340; 23 NE2d 710 (1939).

Hatcher, 443 Mich at 439. Where the probate court erroneously exercises its jurisdiction, the error is analogous to a mistake in an information or in binding over a criminal defendant for trial. Such an error can be challenged in a direct appeal. Id. It cannot, however, be challenged years later in a collateral attack. If such a delayed attack were always possible, decisions of the probate court would forever remain open to attack, and no finality would be possible. 443 Mich at 439-440.

In re Powers, 208 Mich App 582; 528 NW2d 799 (1995), superseded for other reasons by *In re Jenks*, 281 Mich App 514; 760 NW2d 297 (2008), followed *In re Hatcher* regarding impermissible collateral attack. The *Powers* Court, at 587-588, wrote:

> "Further, a probate court's jurisdiction in parental rights cases can be challenged only on direct appeal, not by a collateral attack. *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993). In the instant case, respondent neither directly appealed the probate court's exercise of jurisdiction nor requested a rehearing of this issue during the time the court had jurisdiction over the child or within twenty days after the order terminating parental rights was entered. MCL § 712A.21; MSA § 27.3178(598.21); *Hatcher*, *supra* at 436; 505 NW2d 834. Accordingly, respondent no longer has the ability to challenge the probate court's exercise of jurisdiction. Id at 444; 505 NW2d 834.

The People reviewed cases from the United States Supreme Court and Michigan's surrounding sister states to determine if *In re Hatcher* is an outlier. It is not. The *Hatcher* Court held, "'Want of jurisdiction must be distinguished from error in the exercise of jurisdiction.'"[27] In affirming appellant Dorsey's criminal contempt conviction, the Court of Appeals tacitly followed *Hatcher*, which held: "[M]ere errors or irregularities in the proceedings, however grave, although they may render the

[27] *In re Hatcher*, 443 Mich at 438.

judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked."[28]

Generally, lack of subject matter jurisdiction can be collaterally attacked and the exercise of that jurisdiction can be challenged only on direct appeal.[29] Const 1963, art 6, § 15 grants probate courts original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law. The family division of the circuit court (family court) now exercises this jurisdiction. In construing jurisdictional statutes, retention of jurisdiction is presumed, and any intent to divest a court of jurisdiction must be clearly and unambiguously stated.[30]

The United States Supreme Court has spoken on this issue

In *United States v United Mine Workers of America*, 330 US 258, 293; 67 S Ct 677; 91 L Ed 884 (1947), the Court held: "[W]e find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. (Footnote omitted.) *This is true without regard even for the constitutionality of the Act under which the order is issued*." (Emphasis added by Appellee.)

Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the court. 330 US at 302. The interests of orderly government demand that respect and compliance be given to

[28] 443 Mich at 439.
[29] Id.
[30] *In re Contempt of Dorsey*, 306 Mich App at 582.

orders issued by courts possessed of jurisdiction of persons and subject matter. Id. One who defies the public authority and willfully refuses his obedience, does so at his peril. Id. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. Id. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge. Id.

In *Howat v State of Kansas*, 258 US 181, 190; 42 S Ct 277; 66 L Ed 550 (1922), Chief Justice William Howard Taft wrote: "It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished."

In *Chicot County Drainage Dist v Baxter State Bank*, 308 US 371, 376; 60 S Ct 317; 84 L Ed 329 (1940), the Court wrote: "The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But none the less they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to act. Their

determinations of such questions, while open to direct review, may not be assailed collaterally."

In *Stoll v Gottlieb*, 305 US 165; 59 S Ct 134, 170; 83 L Ed 104 (1938), the Court wrote, where the judgment or decree of the court determines a right under a statute, "that decision is 'final until reversed in an appellate court, or modified or set aside in the court of its rendition.'" The court has the authority to pass upon its own jurisdiction and its decree sustaining jurisdiction against attack, while open to direct review, is res judicata in a collateral action. Id, at 171.

Michigan's surrounding sister states say the same thing

Illinois – In *Baker v Brown*, 372 Ill 336, 340; 23 NE2d 710 (1939), the Supreme Court wrote: "The general rule is, a judgment rendered by a court having jurisdiction of the parties and the subject matter, unless reversed or annulled in some proper proceeding, is not open to contradiction or impeachment in any collateral action or proceeding, except for fraud in its procurement, and even if the judgment is voidable and is so illegal or defective that it would be set aside or annulled on a proper direct application, it is not subject to collateral impeachment so long as it stands unreversed and in force. (Citations omitted.) This rule is so well settled it is not open to question."

Indiana – In *Horner v Doe ex dem State Bank of Indiana*, 1 Ind 130, 133; 1848 WL 2823; 48 Am Dec 355 (1848), the Supreme Court held: "That the judgment of a Court, of any of the states of this union, having jurisdiction of the subject

matter of the suit and of the person, however irregular, is not void and not impeachable collaterally, unless it may be for fraud."

Ohio – In *State ex rel Schneider v Brewer*, 155 Ohio St 203, 205; 98 NE2d 2 (1951), the Supreme Court wrote: "Citation of authorities is not needed to support the proposition that where a court of record has jurisdiction over the subject matter before it and renders a judgment, such judgment may not be collaterally impeached. So long as it stands unreversed, it remains conclusive as to the matter decided."

Wisconsin – In *Falkner v Guild*, 10 Wis 563, 572; 1860 WL 2476 (1860), the Supreme Court wrote: "The proceedings were in a court of general jurisdiction; and the general rule in respect to such courts is, at all events where jurisdiction appears, that though the record does not show everything necessary to regularity, it is to be presumed, unless the contrary expressly appears. And even if irregularity or gross error do appear, the judgment cannot be questioned collaterally."

Injunctive Orders and First Amendment Freedoms:

Alaska and California, a study in contrasts

In *Jacko v State*, 981 P2d 1075, 1077-1078 (1999), the Alaska Court of Appeals held that defendant was properly charged with violating an order, even though the order was later vacated. The *Jacko* Court cited *United States v United Mine Workers of America*, and wrote:

> This doctrine—that a person must obey a court order until it is reversed or vacated by judicial decision—is similar to the rule that a person may not use force to resist an unlawful but peaceable arrest nor use force to resist the seizure of property under an unlawful court order. (Footnotes omitted.) Judge Learned Hand, speaking of the rule that a person may not forcibly resist an unlawful arrest, declared:

> The idea that you may resist peaceful arrest . . . because you are in debate about whether it is lawful or not, instead of going to the authorities which can determine [this question] . . . [is] not a blow for liberty, but[,] on the contrary, a blow for attempted anarchy.
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> *Miller*, 462 P2d 427 (quoting 1958 Proceedings of the American Law Institute, p 254).

> We give the same answer to Jacko's contention that a person may flout a court order with impunity if it later turns out that the order was illegal. Such a rule would foster disorder and violence. We reaffirm our holding in *Weidner*: a person is obliged to obey a restraining order—even an illegal one—until, through judicial process, the order is vacated or reversed.
>
> *Jacko*, 981 P2d at 1077-1078.

In *People v Gonzalez*, 12 Cal 4th 804, 818; 910 P 2d 1366; 50 Cal Rptr 2d 74 (1996), the Supreme Court of California found that a person affected by an injunctive order may challenge the order's validity on the ground that it was issued without or in excess of jurisdiction by either complying with the order while seeking a judicial declaration as to jurisdictional validity, or by disobeying the order and raising jurisdictional contentions when he is sought to be punished for such disobedience. The California Supreme Court wrote:

> As we said in *Berry, supra*, 68 Cal 2d 137; 65 Cal Rptr 273; 436 P 2d 273, unlike in jurisdictions that do not permit collateral challenges to injunctive orders, "[i]n this state a person affected by an injunctive order has available to him two alternative methods by which he may challenge the validity of such order on the ground that it was issued without or in excess of jurisdiction. He may consider it a more prudent course to comply with the order while seeking a judicial declaration as to its jurisdictional validity. [Citation.] On the other hand, he may conclude that the exigencies of the situation or the magnitude of the rights involved render immediate action worth the cost of peril. In the latter event, such a person, under California law, may disobey the order and raise his jurisdictional contentions *when he*

> *is sought to be punished for such disobedience.* If he has correctly assessed his legal position, and it is therefore finally determined that the order was issued without or in excess of jurisdiction, his violation of such void order constitutes no punishable wrong." (*Id* at pp 148-149, 65 Cal Rptr 273; 436 P 2d 273, italics added.)

In *Gonzalez*, *supra* at 819, the California Supreme Court further wrote:

> "We observed that our rule is 'considerably more consistent with the exercise of First Amendment freedoms' than that of other jurisdictions that have adopted the so-called collateral bar rule barring collateral attack on injunctive orders. (*Berry, supra*, 68 Cal 2d at p 150,; 65 Cal Rptr 273; 436 P 2d 273.) The high court of Washington has made a similar observation, stating that *'[f]requently an injunction issues immediately before the planned activity is to occur and there is then no time available to the enjoined part to make a direct attack upon the injunction. The practical result then is that the enjoined party has no adequate remedy at law and cannot engage in a lawful activity because of an unconstitutional order.* To us '[i]t . . . seems unlikely that allowing collateral attack would significantly reduce citizen compliance with lawful decrees; the citizen still faces a substantial risk of criminal penalties if proved wrong in collateral, rather than direct, attack on the decree's validity.'" (State ex rel Superior Court v Sperry, 483 P 2d at p 611; see also Note, Defiance of Unlawful Authority (1970) 83 Harv L Rev 626, 635 [observing that especially in the case of preliminary injunctions, to require obedience to the order pending review or a full hearing is to effectively restrain freedom of speech: *'[i]f collateral attack is barred when there is insufficient time [before the planned speech or strike] for direct attack on the order, the wrongly enjoined party has no adequate remedy* [fns. Omitted]']; Labunski, The 'Collateral Bar' Rule and the First Amendment: the Constitutionality of Enforcing Unconstitutional Orders (1988) 37 Am U L Rev 323, 327 [criticizing collateral bar rule on ground it 'places in the hands of the judiciary the power to threaten contempt to force temporary obedience to invalid orders that never should have been issued'].)" (Emphasis added by Appellee.)

The California Court found that if the trial court issues an order without, or in excess of, jurisdiction, violation of the order does not constitute a punishable wrong. A contemnor may, for the first time, collaterally challenge validity of the order he is charged with violating. The Court wrote: "California courts continue to

reject the collateral bar rule adopted by other jurisdictions. Instead, they apply the rule that in the contempt proceeding, the contemnor may, for the first time, collaterally challenge the validity of the order he or she is charged with violating." *Gonzalez*, 12 Cal 4th at 819.

This argument makes sense when applied to First Amendment rights.[31] An injunctive order preventing "freedom of speech . . . or the right of the people peaceably to assemble" may prevent the exercise of First Amendment rights when there is no time to appeal from the order. However, that is not the case we have involving appellant Dorsey.

The court order implicates appellant's Fourth and Fifth Amendment rights

The family court's order requiring appellant Dorsey to submit to random drug testing was unconstitutional under the Fourth Amendment and Const 1963, art 1, § 11.[32] The Court of Appeals acknowledged this right, "[h]owever, the unconstitutionality of the order is not a defense to criminal contempt allegations.

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[31] US Const, Am I reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance."

[32] *In re Contempt of Dorsey*, 306 Mich App at 583. US Const, Am IV reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." Const 1963, art 1, § 11 reads: "The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon seized by a peace officer outside the curtilage of any dwelling house in this state."

The order was entered by a court with proper jurisdiction. Therefore, appellant was required to follow it." *In re Contempt of Dorsey*, 306 Mich App at 583.

Appellant also has a Fifth Amendment right to avoid self-incrimination by *not* providing a urine sample, which could have been turned over to law enforcement authorities by the worker assigned to her juvenile son's case.[33] The Court of Appeals also considered this:

> "Just like the testing program in *Ferguson*, testing in this case is characterized by a general interest in law enforcement. The magistrate imposed the urinalysis requirement during juvenile delinquency proceedings under the JCA, which are quasi-criminal in nature. . . . Nothing prevented the probation officer from conveying the Does' test results to law enforcement. Their failure to comply could result in contempt sanctions, which would be brought and pursued by the prosecuting attorney. Indeed, the juvenile probation officer in this case reported the parents' positive urinalysis results to the prosecutor."[34]

Michigan case law goes way back in supporting the Court of Appeals' view that "the underlying challenge to the original order cannot be raised for the first time in a contempt proceeding."[35] More than 120 years ago, Justice Grant wrote:

> "It was then the clear duty of the defendant[] to respect and obey the [order]. [She] could have answered immediately, and have promptly moved the court for a dissolution or modification. [She] could easily have done this within [] days. But [she] chose to take the law into [her] own hands, and to wait [almost a year] before answering and taking

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[33] US Const, Am V reads: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

[34] *In re Contempt of Dorsey*, 306 Mich App at 587.

[35] 306 Mich App at 590.

> that orderly course dictated alike by reason and law. Such conduct cannot be too severely reprimanded."

Holland v Weed, 87 Mich 584, 590; 49 NW 877 (1891).

In 1891, our Supreme Court consisted of five Justices, including Justice Long, who concurred with Justice Grant. Chief Justice Champlin, joined by Justices Morse and McGrath, wrote the majority opinion in *Holland v Weed*.

In *Rose v Aaron*, 345 Mich 613; 76 NW2d 829 (1956), the Court drew upon the majority holding in *Holland v Weed*. If this Court is concerned with upholding a finding of contempt – with jail and fines imposed – based upon an unconstitutional order, perhaps *Rose v Aaron*, 345 Mich at 615, provides an alternative:

> Although the temporary restraining order was improperly granted, it should have been obeyed until dissolved and the court had the power to punish disobedience thereof as for contempt. *Holland v Weed*, 87 Mich 584; 49 NW 877; *Phillips v City of Detroit*, Fed Cas No 11,101, 2 Flip 92. Accordingly, defendant is not entitled to reversal of the order from which he appeals not to costs. That order further provided, however, that the sentence therein specified be suspended to permit an appeal here, failing in which defendant was required to present himself to the trial court 'for re-sentence'. In line with the reasoning in *Holland v Weed*, *supra*, we do not think in view of the circumstances of this case and the provisions of the lower court's order, that that court is called upon to protect its dignity by resentencing defendant for violation of a temporary restraining order improperly entered.

The family court sentenced appellant Dorsey to 93 days in jail. The court further ordered appellant to pay costs in the amount of $200, attorney's fees in the amount of $120, and "a total of $500 to the court within 30 days of her release from jail."[36] The family court granted appellant's motion to stay the sentence pending

[36] *In re Contempt of Dorsey*, 306 Mich app 571, 579; 858 NW2d 84 (2014).

appeal to the Court of Appeals.[37] Thus, appellant Dorsey's case is in a holding pattern similar to *Rose v Aaron*, and this Court could remand with similar instructions.

Conclusion

Imagine a world where individuals, or even lower courts, could ignore court orders because they believed them to be unconstitutional. If police show up with a search warrant – a form of court order – would the homeowner be justified in resisting the search as long as the warrant later turned out to be constitutionally invalid? Is not the better course of action submitting to the court's authority, then challenging the constitutionality of the search warrant in a court of law? If the search warrant is invalid, the seized contraband is fruit of the poisonous tree and it will be suppressed; the individual homeowner will not be prosecuted without the suppressed evidence.

What if lower courts started ignoring orders and opinions from the Michigan Court of Appeals and Supreme Court because the prosecutors and judges believed that those orders were unconstitutional and would be overturned in a higher court? Imagine the systemic disruption if lower courts decided to ignore this Court's *Lockridge*[38] opinion because the trial court judges and prosecutors thought it would be overturned in the United States Supreme Court. Such a system could not function. Until an order is reversed, it must be followed.

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[37] 306 Mich App at 580.
[38] *People v Lockridge*, 498 Mich 358; ___ NW2d ___ (2015).

And, reversal must be sought before a party is found in contempt for not following the order. Otherwise, everyone is free to ignore and disregard court orders without first seeking to get them reversed. And, with no consequences for flouting the authority of the Court, individuals will be empowered to ignore court orders. No system of justice can long endure such a dysfunctional practice.

The only exception to this school of thought should be injunctive orders where, for example, the protestors who are prohibited from picketing lack sufficient time before the event to directly (rather than collaterally) attack the illegality or unconstitutionality of the prohibitive order. Freedom of speech and the right of the people to peaceably assemble should not be abridged by an injunctive order which is a prior restraint. The California case of *People v Gonzalez* involves an injunctive order that constitutes such a prior restraint. Even the Michigan case of *Holland v Weed* involved an injunctive order.

By thus arguing, we do not elevate one constitutional right over another. Rather, we merely point out that different remedies attach for the violation of different rights. Suppression of the evidence is the proper remedy for a Fourth or Fifth Amendment violation.

Perhaps the most compelling argument advanced in *Hatcher* involved finality of judgments. Where the probate court erroneously exercises its jurisdiction, such an error can be challenged in a direct appeal. It should not, however, be open to collateral attack years later. If such a delayed challenge were always possible,

decisions of the probate court would forever remain open to attack, and no finality would be possible. 443 Mich at 439-440.

Relief Requested

Appellee asks this Court to **Deny** Appellant's application for leave to appeal, and thus **Affirm** the Juvenile Court's orders finding contempt on the part of Kelly Michelle Dorsey.

Respectfully Submitted,

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Dated: November 10, 2015

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